



CITY COUNCIL PACKET

May 8, 2020

Supplemental items to the May 7, 2020 packet

Amended Agenda

Agenda items

8. d. **Attorney Memo** regarding Emergency Ordinance 2020-08, 2020-09, and 2020-10

Emergency Ordinance 2020-10(A), An Emergency Ordinance of the Dillingham City Council Mandating Hygienic Standards for the Use of City Facilities and Property to Facilitate Sustainable Economic Opening

8. g. **Attorney Memo** regarding Emergency Ordinance 2020-11

Fisheries Related Use District Maps

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Alice Ruby, **Mayor**

Council Members

- Chris Napoli (Seat A) • Bill Rodawalt (Seat B) • Kaleb Westfall (Seat C)
- Curt Armstrong (Seat D) • Andy Anderson (Seat E) • Gregg Marxmiller (Seat F)

DILLINGHAM CITY COUNCIL

***Participate by dialing 888-392-4560; meeting code 57103
Please MUTE your phone upon entering the call***

REGULAR MEETING	6:00 P.M.	MAY 7, 2020 MAY 8, 2020
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- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
 - a. Regular Council Meeting, April 2, 2020 page 5
 - b. Special Council Meeting, April 30, 2020 page 9
 - c. BOE Meeting, May 5, 2020 page 13
- 4. APPROVAL OF CONSENT AGENDA**
APPROVAL OF AGENDA
- 5. STAFF REPORTS**
 - a. City Manager and Staff Reports page 17
 - b. Standing Committee Reports
- 6. PUBLIC HEARINGS**
 - a. Ordinance No. 2020-02; An Ordinance of the Dillingham City Council Amending Dillingham Municipal code Chapter 8.04 to Prohibit the Distribution of Single Use Disposable Plastic Shopping Bags
 - b. Ordinance No. 2020-03; An Ordinance of the Dillingham City Council Amending Title 4 of the Dillingham Municipal Code to Adopt by Reference the Alaska Remote Sellers Sales Tax Code and to Amend Chapter 4.20 to Add and Amend Definitions, Repeal Section 4.20.150, Adopt a Late Filing Fee, and Amend Penalty and Interest Provisions
 - c. Ordinance No. 2020-04; An Ordinance of the Dillingham City Council Amending Chapter 4.30, Contract and Purchase Procedures to Adjust the Purchase Parameters
 - d. Ordinance No. 2020-08; An Emergency Ordinance of the Dillingham City Council Requiring Protective Measures to Prevent the Spread of COVID 19
 - e. Ordinance No. 2020-09; An Emergency Ordinance of the Dillingham City Council Requiring Quarantine and Isolation Measures to Prevent the Spread of COVID 19

- f. *Ordinance No. 2020-10(A); An Emergency Ordinance of the Dillingham City Council Mandating Hygienic Standards for the Use of City Facilities and Property to Facilitate Sustainable Economic Opening*
- g. Ordinance No. 2020-11; An Emergency Ordinance of the Dillingham City Council 1) Establishing a Temporary Land Use District Called the Fisheries Related Use District; 2) Limiting Permitted Uses Within the Fisheries Related Use District; and 3) Requiring Persons Entering the Fisheries Related Use District to Comply with State Mandates and City Rules

7. CITIZEN’S DISCUSSION (Prior Notice or Agenda Items)

- a. BBRSDA presentationpage 61

8. ORDINANCES AND RESOLUTIONS

- a. Adopt Ordinance No. 2020-02; An Ordinance of the Dillingham City Council Amending Dillingham Municipal code Chapter 8.04 to Prohibit the Distribution of Single Use Disposable Plastic Shopping Bagspage 63
- b. Adopt Ordinance No. 2020-03; An Ordinance of the Dillingham City Council Amending Title 4 of the Dillingham Municipal Code to Adopt by Reference the Alaska Remote Sellers Sales Tax Code and to Amend Chapter 4.20 to Add and Amend Definitions, Repeal Section 4.20.150, Adopt a Late Filing Fee, and Amend Penalty and Interest Provisionspage 67
- c. Adopt Ordinance No. 2020-04; An Ordinance of the Dillingham City Council Amending Chapter 4.30, Contract and Purchase Procedures to Adjust the Purchase Parameterspage 81
- d. Adopt Ordinance No. 2020-08; An Emergency Ordinance of the Dillingham City Council Requiring Protective Measures to Prevent the Spread of COVID 19page 85
- e. Adopt Ordinance No. 2020-09; An Emergency Ordinance of the Dillingham City Council Requiring Quarantine and Isolation Measures to Prevent the Spread of COVID 19 page 93
- f. *Adopt Ordinance No. 2020-10(A); An Emergency Ordinance of the Dillingham City Council Mandating Hygienic Standards for the Use of City Facilities and Property to Facilitate Sustainable Economic Opening*page 99
- g. Adopt Ordinance No. 2020-11; An Emergency Ordinance of the Dillingham City Council 1) Establishing a Temporary Land Use District Called the Fisheries Related Use District; 2) Limiting Permitted Uses Within the Fisheries Related Use District; and 3) Requiring Persons Entering the Fisheries Related Use District to Comply with State Mandates and City Rulespage 107

9. UNFINISHED BUSINESS

- a. Citizen Committee Appointments
 - 1) Library Advisory Board – 1 seat open
 - 2) School Facility Committee – 1 seat open
 - 3) Port Advisory Committee – 1 seat open
 - 4) Friends of the Landfill – 1 seat open
- b. Progress Report
 - 1) Dave Carlson House Property
 - 2) Territorial School

10. NEW BUSINESS

11. **CITIZEN'S DISCUSSION (Open to the Public)**
12. **COUNCIL COMMENTS**
13. **MAYOR'S COMMENTS**
14. **ADJOURNMENT**

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MEMORANDUM

TO: Tod Larson, City Manager



FROM: Brooks W. Chandler
Boyd, Chandler, Falconer & Munson, LLP

RE: Emergency Ordinances 2020-08, 2020-09, 2020-10

DATE: May 8, 2020

Based on input from last night's meeting I am providing some possible motions to amend that could help keep things organized this evening.

Ordinance 2020-08

1. I move to delete Sections 4(A) and 4(B).
2. I move to amend Section 5 C to add the sentence: "All rules issued are subject to Council approval".
3. I move to delete Section 8(A) (or 8(B) depending on preference).

Ordinance 2020-09

1. I move to amend Section 4(B)(4) to replace "their Dillingham residence" with "a Dillingham residence".

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2. I move to amend Section 4(B) by deleting subsections 6, 7 and 8.
 3. I move to delete Section 4(F) (if prefer requiring quarantine in Dillingham).
 4. I move to delete Sections 4(B)(1),(3),(4),(5),(6),(7) and (8) (if prefer requiring quarantine outside Dillingham)
 5. I move to delete the last sentence of Section 4(B)(3) (if do not want to charge for use of city managed quarantine site).
 6. I move to add amend Section 6(A) to add a new subsection 5 “leave Dillingham”.
 7. I move to amend Section 6 to add a new subsection (D). “Those quarantining on a vessel must stay within 10 yards of the vessel”(this is not covered by Mandate 17 and would set a more precise social distancing standard than “to the maximum extent possible”).
 8. I move to amend Section 7(A)(2) to add “or operate” after “own” and “or commercial fishing equipment” after “vessel”.
 9. I move to amend Section 7(A)(3) to replace “vessel” with “permit holder “.
 9. I move to amend Section 7(A)(4) to replace “vessel” with “permit holder whose vessel or equipment is”.
 10. I move to delete Section 7(B). (Alternatively could move to replace “single entry” with a higher limit although challenging to enforce).
 11. I move to delete Section 8.
 12. I move to delete the last sentence of Section 10(2)(if do not want to require payment to isolate at a city-managed site).
 13. I move to delete Section 10(D)(if do not want to mandate evacuation).
 14. I move to delete Section 11(B) (or A if graduated fine system is preferred).

Ordinance 2020-10.

1. I move to Amend Section 5 (A)(2) and (3)to read:
 2. Has completed any required quarantine immediately prior to arrival in Dillingham; or

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3. Has completed any required quarantine while in the Dillingham census area; or
 4. Is using city facilities to leave Dillingham to complete their required quarantine outside the City; and
 5. Has, within 72 hours prior to entry to Dillingham from outside the Dillingham census area, obtained a negative test result on a Sars-Covid 2 PCR, antibody or antigen test.

These changes are probably best considered as a package. The result of these changes is to require a positive test before coming to Dillingham from outside the region in order to be allowed to use city facilities. This also allows folks who want to minimize time in Dillingham before launching and complete quarantine on the water to use the harbor. The PCR test is the one using a swab it is considered more reliable than antibody or antigen tests. I am not a doctor but because a mandatory quarantine is required using an antibody or antigen test result can be justified from a public health standpoint and would expand the testing options available to those traveling to Dillingham. But if council prefers to require just the PCR test the motion to amend can leave out the reference to antibody or antigen.

2. I move to amend Section 5 (E)(1) to change A.3 to A.5 and to change 48 to 72.
3. I move to amend Section F to delete the definition of “Has been in the Dillingham census are lawfully for 14 consecutive days”.
4. I move to amend the definition of “not reasonably available” to replace 48 with 72 and to change “fair” to “fare”.
5. I move to delete Section 6.
6. I move to amend Section 7 to replace “14 days” with “11:59 pm May 11" and to change July 4 to July 10.

Because these changes are extensive I will prepare a substitute ordinance 2020-10(A). I also will consider how testing could be incorporated into the existing travel permit system although I have strong reservations about the constitutionality of requiring testing as a condition for travel.

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CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-10(A)

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL MANDATING HYGENIC STANDARDS FOR THE USE OF CITY FACILITIES AND PROPERTY TO FACILITATE SUSTAINABLE ECONOMIC OPENING

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative findings.

The legislative findings contained in Emergency Ordinance 2020-07 Section 1 numbered 1-46 are adopted by reference as if fully set forth herein. In addition Council makes the following legislative findings:

47. As of May 5, 2020, Dillingham still had 0 reported cases of COVID-19.

48. As of May 5, 2020, there had been 371 reported cases of COVID-19 in the State of Alaska.

49. As of May 5, 2020, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

California - 54,937

Oregon - 2,759

Washington - 15,594

50. It is the goal of the city to promote sustainable “opening of the economy”.

51. Unrestricted use of city property and facilities is likely to result in unhygienic practices and, in turn, COVID-19 outbreaks, which would require complete closure of the facilities and result in significant economic loss.

51. To ensure that city property and facilities remain available for public use and to ensure that economic activity is sustainable, restrictions on the use of city property and facilities to ensure their continued use are desirable.

52. To further federal, state, and city goals of “opening the economy” and ensuring that it can remain open, the city council has determined that short-term use restrictions are necessary.

Section 2. Finding of Emergency. The City Council hereby finds the facts set forth in Section 1 constitute an emergency.

Section 3. Authority. This ordinance is enacted pursuant to the general police powers of the City of Dillingham and the City’s authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Classification. This is an emergency non-code ordinance.

Section 5. Use of City Facilities Restricted for Health and Safety of All Users.

A. No person may use any city facilities, including, but not limited to, all city port facilities governed by DMC 2.42, unless the person:

1. Does not present with any symptoms of COVID-19; and
2. Has completed any required quarantine immediately prior to arrival in Dillingham; or
3. Has completed any required quarantine while in the Dillingham census area; or
4. Is using city facilities to leave Dillingham to complete their required quarantine outside the City; and
5. Has obtained a negative test result on a Sars-Covid 2 PCR, antibody or antigen test within 72 hours prior to entry to Dillingham from outside the Dillingham census area.

B. It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under subsection A. of this section or to attempt to do so; such act shall be deemed a violation of subsection A.

C. An organization shall be deemed to have violated this section if the violation was committed by or with the knowledge of any person with a fiduciary relationship to the organization or other members of the organization or where such relationship would exist if there were other members of the organization and specifically includes any officer, director if a corporation, member or manager of an LLC, partner in a partnership, and any person holding 10% or more of the equity or control of the organization.

D. Penalties and Remedies.

1. Violation of subsection A. of this section constitutes criminal trespass upon city property, in violation of AS 11.46.330 and may be charged as such provided:
 - a. that notice against trespass under this section is personally communicated to a person so charged by a city official, including any city police officer; or
 - b. that notice that violation of A. of this section constitutes criminal trespass upon city property is given by posting in a reasonably conspicuous manner under the circumstances; or

- c. for vessel owners or captains, that notice that violation of A. of this section constitutes criminal trespass upon city property is given through any method of communication or transmission customarily use by mariners and of which mariners have a duty to remain informed, such as published notices to mariners.
2. In addition to any remedy or penalty, except those set forth in subsection D.1. and D.3. which shall not be cumulative, violation of this section, provided that notice described in subsection D.1. has been given, shall be chargeable as a criminal violation of municipal and punishable upon conviction by:
 - a. up to 10 days in jail and a \$1,000 fine if the offender is a natural person, or
 - b. Up to a \$10,000 fine and forfeiture of any instrument or property used in the commission of the offense if the offender is an organization.
3. In addition to any remedy or penalty, except those set forth in subsection D.1. and D.3. which shall not be cumulative, violation of this section, provided that notice described in subsection D.1 has been given, may be remedied, following an administrative hearing, by:
 - a. A civil fine of not more than \$1,000 if the violator is a natural person or \$10,000 if the violator is an organization;
 - b. Forfeiture of any instrument or property used in the commission of the offense; and
 - c. If the violator is an organization, forfeiture of any profits or benefits the violator obtained in connection with or proximately related to the violation, including, but not limited to, any fish caught or obtained obtained in connection with or proximately related to the violation.
4. A natural person found to have violated this section shall be placed on the denied services list established by DMC 4.40.010 and shall remain on such list for 365 days for violation if this section.
5. An organization found to have violated this section, and any vessel belonging to the organization at the time of the violation, shall be placed on the denied services list established by DMC 4.40.010 and shall remain on such list for five years for violation if this section.

6. If, three or more citations for violation of this section are issued to three or more separate natural persons and/or organizations within any consecutive seven-day period, the port director, pursuant to DMC 2.42.030.B., shall declare all port facilities closed for a period of 14 days.

E. Affirmative Defense & Exceptions:

1. It shall be an affirmative defense to any charge or penalty related to violation of this section that a test described in A.5. was not reasonably available in the city and in any location in which the person was in the 72 hours prior to arriving in the city.
2. Subsections A and B shall not apply to any agent or employee of the federal or state governments in the course of executing official duties.
3. Subsections A and B shall not apply to bona fide medical professionals in the course of executing professional duties.

F. Definitions & Standards

For the purpose of this sections, the following definitions shall apply:

“aid, abet, incite, compel, or coerce” shall include any direction, instruction, or duty imposed by an employer, principal, or person engaging a contractor upon an employee, agent, or contractor.

“Areas where COVID-19 is circulating” includes all municipalities which, in the previous 18 days, have confirmed any new cases of COVID-19.

“Not reasonably available” means that

- (i) no testing facilities or tests are available in the city or in any location in which the person was in the 72 hours prior to arriving in the city; or
- (ii) the fee for testing exceeds four times the regular advertised fare for individual air transportation between Anchorage and the City of Dillingham; or
- (iii) existing state restrictions restrict the person from obtaining a test, if and to the extent state testing guidelines and restrictions allow for the testing of asymptomatic persons in high-consequence settings (e.g., people coming in to remote communities from areas where COVID-19 is circulating).

“Organization” has that meaning given by AS 11.81.900(43).

“Remote communities” shall include all communities within the Dillingham census area.

Section 6. Effective Date. This ordinance shall go into effect at 11:59 pm on May 11, 2020 and remain in effect until July 10, 2020.

PASSED and ADOPTED by the affirmative vote of all the Dillingham City Councilmembers present or the affirmative vote of four Dillingham City Councilmembers, whichever is less, on May 8, 2020.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Lori Goodell, City Clerk

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MEMORANDUM

TO: Tod Larson, City Manager



FROM: Brooks W. Chandler
Boyd, Chandler, Falconer & Munson, LLP

RE: Emergency Ordinance 2020-11

DATE: May 8, 2020

Based on input from last night's meeting I am providing some possible motions to amend Ordinance 2020-11 that could help keep things organized this evening. One possibility is simply not taking up this ordinance at all if Council believes 2020-08, 2020-09 and 2020-10 are adequate.

Ordinance 2020-11

1. I move to replace the last sentence of Section 4 with "Those properties zoned as Fisheries Related Use are shown on the aerial photographs attached as Exhibit A to this ordinance".
2. I move to amend Section 5 subsections 2 and 6 to add "or operates" after "owns" and "or commercial fishing equipment" after "vessel".
3. I move to amend Section 5 subsections (3) and (4) to replace "vessel" with "permit holder whose vessel or equipment is".
4. I move to delete Section 8. (Alternatively could move to replace "single entry" with a

higher limit although challenging to enforce).

5. I move to delete Section 9. (If the quarantine ordinance is adopted this section has marginal benefit and is difficult to enforce).

6. I move to delete Section 12.

7. I move to delete Section 13. (If EO-08 is adopted this is already covered).

8. I move to delete Section 14B) (or A if graduated fine system is preferred).

9. I move to change the effective date from May 7 to May 8.









